# SUPREME COURT OF THE UNITED STATES.

## No. 104.

McKEAN BUCHANAN, PLAINTIFF IN ERROR,

vs.

JAMES ALEXANDER.

IN ERROR TO THE CIRCUIT SUPERIOR COURT FOR THE COUNTY OF NORFOLK, STATE OF VIRGINIA.

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J. & G. S. Gideon, printers.

Pleas before the honorable Richard H. Baker, judge of the circuit superior court of law and chancery for Norfolk county, at the court-house of said county, on Thursday, the 10th day of November, in the year of our Lord one thousand eight hundred and forty-two.

Be it remembered, that, at another day, to wit, in the clerk's office of our said circuit superior court of law and chancery for Norfolk county, on the 29th March, 1842, came McKean Buchanan, by Robert C. Nicholas, esq., his attorney, and filed his petition, with an order thereon endorsed, awarding a supersedeas against James Alexander; which petition, with the endorsement thereon, is in the words and figures following, to wit:

To the honorable Richard H. Baker, judge of the circuit superior court of law and chancery for the county of Norfolk.

The petition of McKean Buchanan respectfully represents: That he is aggrieved by a final judgment of the county court of Norfolk county, rendered on the 15th day of November, 1841, against him as garnishee, in an attachment theretofore issued by a justice of the peace of said county against the estate of Andrew J. Green, for a debt of $49 85 cts., due by said Green to a certain James Alexander. A transcript of the record of the judgment complained of is herewith presented, by which it will be perceived that said judgment was rendered against your petitioner for the sum of $46 25 cts., on account of moneys acknowledged by him to be in his hands as *purser of the United States*, (and not otherwise,) and which appears upon his books, as purser aforesaid, to be due to the said Andrew J. Green. Your petitioner is advised that said judgment is erroneous, on various grounds, but he will content himself for the present with assigning the following errors, viz: The money in his hands, on account of which said judgment was pronounced against him as garnishee, was the money of the United States, and not of the said Andrew J. Green, and could never become his money, except in the mode prescribed by law and the regulations of the Navy Department; that the debt due to said Green for services was a debt due by the United States, and not by your petitioner, and was therefore not liable to the attachment.

And for the said errors he prays a writ of supersedeas to the judgment aforesaid.

McKEAN BUCHANAN,
*By his counsel.*

I, Robert C. Nicholas, an attorney practising in the circuit superior court of law and chancery for the county of Norfolk, do certify,

that in my opinion, there is sufficient matter for reversing the judgment complained of in the foregoing petition.

*March 25th*, 1842. R. C. NICHOLAS.

A supersedeas is allowed upon the within record, upon the petitioner, or any other person, entering into bond, with sufficient security, in the clerk's office, in the penalty of double the amounts of the judgment against the petitioner, conditioned according to law.

P. N. NICHOLAS,

*A Judge of the General Court, and of the court for the 21st circuit.*

To the clerk of the superior court of law and chancery for the county of Norfolk.

MARCH 25, 1842.

The following is a copy of the record filed with and referred to in the foregoing petition:

Know all men by these presents, that we, James Alexander and Cornelius Ironmonger are held and firmly bound to Andrew J. Green in the sum of ninety-nine dollars $\frac{70}{100}$, to be paid to the said Andrew J. Green his certain attorney, his executor, administrators or assigns; for the true payment whereof we bind ourselves, jointly and severally, our joint and several heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this 11th of November, 1841.

The condition of the above obligation is such, that whereas the above bound James Alexander hath this day applied to James E. Wilson, a justice of the peace for the county of Norfolk, for an attachment on the estate of the above named Andrew J. Green, for the sum of $49 85 which attachment hath been granted, on previously entering into this bond, returnable to the next county court; if, therefore, the said James Alexander shall pay and satisfy all costs which shall be awarded to the said Andrew J. Green, in case the said James Alexander shall be cast in the said suit, and also all damages which shall be recorded against him, the said James Alexander, for his suing out this said attachment, then this obligation to be void, else to remain in full force.

JAS. ALEXANDER, [SEAL.]
CORNELIUS IRONMONGER. [SEAL.]

Sealed, signed, and delivered in presence of—
Test—THOS. R. GORDON.

NORFOLK COUNTY, *to wit:*

To Thos. R. Jordan, constable of said county.

Whereas James Alexander has this day complained before me, James E. Wilson, a justice of the peace for the county aforesaid, that Andrew J. Green is indebted to him in the sum of forty-nine dollars $\frac{85}{100}$, due by account; and that the said Andrew J. Green absconds or conceals himself, so that the usual process of law cannot be served on him; and that said James Alexander having given

bond and security according to law: These are, therefore, to require you in the name of the Commonwealth, that you attach the estate of the said Andrew J. Green, or so much thereof as will be sufficient to satisfy the said sum of $49 85, and the costs, and such estate, so attached in your hands, to secure or so to provide, that [the] same may be liable to further proceedings to be had thereon, at the next court, to be held for this county, and that you then and there make return how you have executed this warrant.

Given under my hand and seal, this 11th of November, 1841.

JAMES E. WILSON, *J. P.* [SEAL.]

NORFOLK COUNTY, *to wit:*

Pursuant to the within warrant I have attached, by levying on the goods and chattels of the within named Andrew J. Green, in the hands of McKean Buckannan, or so much thereof as may be sufficient to satisfy the said debt and costs, and have summoned the said garnishee to appear at the next county court, to be held for this county, on Monday next, the 15th of November, 1841.

THOS. R. JORDAN, *Constable.*

At a court held for Norfolk county, this 15th day of November, 1841.

JAMES ALEXANDER vs. ANDREW J. GREEN. } Attachment.

James Alexander having taken out an attachment, according to law, against Andrew J. Green, an absconding debtor, and Thomas R. Jordan, a constable of this county, to whom the said warrant of attachment was directed, having made return that he had executed the said attachment on the goods, chattels, and moneys of the said Andrew J. Green, in the hands of McKean Buchannan, and summoned him as garnishee, this day came, [as well] the plaintiff, by his attorney, as said garnishee, in his proper person, who, being sworn, declared, that he held in his hands, and that there was due upon his books, as purser of the United States ship Constitution, at the time of the service of the said attachment, as well as at the present time, the sum of forty-nine dollars and sixty-three cents, and no more; and the said defendant not appearing, though solemnly called, and it appearing, by the testimony of a witness, that the defendant is indebted to the plaintiff in the sum of forty-six dollars and twenty-five cents, it is considered by the court, that the plaintiff recover against the defendant the said forty-six dollars and twenty-five cents, and his costs by him in this behalf expended; and it is further considered, that the plaintiff recover against the said McKean Buchannan, purser as aforesaid, the aforesaid sum of forty-six dollars and twenty-five cents, towards satisfying this judgment, of the moneys in his hands, admitted by the said Buchannan to be in his hands, and belonging, as aforesaid, to the said Andrew J. Green.

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|---|---|
| Costs—Clerk - - - - - - - | $1 93 |
| Attorney - - - - - - - | 2 25 |
| Const. - - - - - - - | 84 |
| | $5 27 |

Upon which judgment, an execut*or* of fi. fa. issued on the 2d day of December, 1841.

The *foregoing* is a copy of the account upon which the foregoing proceedings are founded.

| 1841 | | *Andrew J. Green to Jas. Alexander,* | Dr. |
|---|---|---|---|
| Nov. | 1 | To cash 18s. - - - - | $3 00 |
| " | 2 | " cash 30s. - - - - | 5 00 |
| " | " | " shirt, 6s. - - - - - | 1 00 |
| " | 4 | " cash, 30s. - - - - | 5 00 |
| " | 5 | " cash 6s., do. 6s., goose 7s. 6d. - | 3 25 |
| " | " | " cash 12s. - - - - | 2 00 |
| " | 7 | " shirt, 9s. cash 30s. - - - | 6 50 |
| " | 8 | " cash 30s. - - - - | 5 00 |
| " | 9 | " cash 30s. - - - - | 5 00 |
| " | " | " cash 24s. - - - - | 4 00 |
| " | " | " 1½ week's board, 24s. - - - | 6 00 |
| " | " | " washing, - - - - | 50 |
| " | " | " cash lent at different times out doors - | 3 60 |
| | | | $49 85 |
| | | | 3 60 |
| | | | $46 25 |

Copy, record.—Test: ARTHUR EMMERSON, Jr.,
*D'y Clerk, C.*

And at another day, to wit: at a special term of the circuit superior court of law and chancery, for Norfolk county, held at the court-house, on the 20th day of July, 1842.

McKean Buchannan, plff.,
against
James Alexander, deft.

Upon a supersedeas to a judgment of the county court of Norfolk, rendered on the 15th day of November, 1841, upon an attachment against Andrew J. Green, an absconding debtor, in favor of James Alexander, whereby it was considered that the plaintiff recover against McKean Buchannan, purser of the United States navy, the sum of forty-six dollars and twenty-five cents, towards the satisfaction of the judgment against the said Andrew J. Green, of the mo-

neys in his hands, admitted by the said Buchannan to be in his hands, and belonging, as aforesaid, to the said Andrew J. Green.

By consent of the parties, by their attorneys, it is ordered that this suit be continued till the next court.

And now, at this day, to wit, at a circuit superior court of law and chancery, continued by adjournment, and held for the said county of Norfolk, at the court-house, on the same day and year first herein before mentioned, to wit, on Thursday, the 10th day of November, 1842.

This day came the parties, by their attorneys, and thereupon the transcript of the record of the judgment aforesaid being seen and inspected, it seems to the court here, that there is no error in the said judgment. Therefore it is considered that the same be affirmed, and that the defendant recover against the plaintiff damages, according to law, for retarding the execution thereof, and his costs by him about his defence in this behalf expended.

| | |
|---|---|
| Plaintiff—Costs - - - | $4 07 |
| Defendant—Costs - - - | 6 99 |

STATE OF VIRGINIA, *Norfolk county, to wit :*

I, Arthur Emmerson, clerk of the circuit superior court of law and chancery for Norfolk county, in the State of Virginia, do hereby certify, that the foregoing is a true transcript of the record and proceedings upon a supersedeas lately depending in the said circuit superior court of law and chancery, between McKean Buchanan, plaintiff, and James Alexander, defendant, with all things touching the same, as fully and wholly as they now exist among the records of my office.

In testimony whereof, I hereto set my hand, and annex the seal of said court, this sixteenth day of May, in the year of our [SEAL.] Lord one thousand eight hundred and forty-three, and in the 67th year of the Commonwealth.

ARTHUR EMMERSON, *C. C.*

VIRGINIA, *Norfolk county, to wit :*

I, Richard H. Baker, only judge of the circuit superior court of law and chancery for the said county of Norfolk, in the State of Virginia, do hereby certify, that Arthur Emmerson, who hath given the preceding certificate, *as* clerk of the said court, and that his said attestation is in due form.

Given under my hand, this sixteenth day of May, in the year of our Lord one thousand eight hundred and forty-three, in the 67th year of the Commonwealth.

RICH'D H. BAKER.

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|---|---|
| Copy record, - - - - - - | $2 52 |
| Seal, - - - - - - - - | 1 36 |
| | $3 88 |

UNITED STATES OF AMERICA, *to wit*:

The President of the United States, to the honorable the judge of the circuit superior court of law and chancery for the county of Norfolk, in the State of Virginia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said circuit superior court of law and chancery for the said county of Norfolk and State aforesaid, before you, between McKean Buckanan, plaintiff, and James Alexander, defendant, upon a writ of supersedeas to a judgment of the county court of Norfolk, the said circuit superior court of law and chancery being the highest court in the said State in which a decision could be had in said suit, a manifest error hath happened, to the great damage of the said McKean Buchanan, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom [of] the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the ninth day of May, in the year of our Lord one thousand eight hundred and forty-three.

HENRY GIBSON, [SEAL.]

*Clerk of the circuit court of the United States for the fourth circuit and district of Virginia.*

Allowed by me, P. V. DANIEL.

United States of America to James Alexander, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit superior court of law and chancery, for the county of Norfolk, in the State of Virginia, wherein McKean Buchanan is plaintiff in error, and James Alexander is defendant in error, to show cause, if any there be, why judgment rendered against the said McKean Buchanan, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witnesseth the honorable Peter V. Daniel, one of the justices of